WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 755	Assembly Amendment 1 and Senate Amendments 1 and 2
Memo published: **March 10, 2004**	*Contact*: **Russ Whitesel, Senior Staff Attorney (266-0922)**

Background

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended for enactment in all the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. According to the analysis prepared by the Legislative Reference Bureau, Assembly Bill 755 enacts UETA in Wisconsin, with minor nonsubstantive changes necessary to incorporate the act into the existing statutes.

Assembly Amendment 1

Assembly Amendment 1 introduced by Representative Nischke makes a series of changes in the original legislation. Included in those changes are the following:

1. The original bill included exemptions from certain provisions of the public records law in ch. 16. Specifically, language was added to three sections to provide that the current law relating to microfilm reproduction (s. 16.61 (7), Stats.), transfer of records to optical discs and electronic storage of documents (s. 16.611 (2) (e), Stats.), and regulation of local government records (s. 16.612 (2), Stats.) did not apply to documents or public records governed by s. 137.20 which relates to the retention of electronic records and originals.

Assembly Amendment 1 ***removes*** these exemptions from the public records law from the bill, retaining current law with respect to those public records and retention by governmental units. Specifically, the amendment provides that in addition to the requirements of UETA, a governmental unit that has custody of a record is also further subject to the retention requirements for public records of state agencies, and the records of the University of Wisconsin Hospitals and Clinics Authority and the retention requirements for documents of local governmental units.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

In addition, the draft provides the State Public Records Board the authority to promulgate rules prescribing standards consistent with the UETA law for retention of records by state agencies, the University of Wisconsin Hospitals and Clinics Authority, and local governmental units.

2. Under the original legislation, the rule-making authority currently in existence for the Department of Financial Institutions relating to electronic signatures was amended to authorize the rule-making authority relation to electronic records. The amendment ***deletes*** this rule-making authority and provides the Department of Administration (DOA) with authority to promulgate rules concerning the use of electronic records and electronic signatures by governmental units, which will govern the use of electronic records or signatures by governmental units unless otherwise provided by law. This provision also provides that the rules shall include standards regarding the receipt of electronic records or electronic signatures that promote consistency and interoperability with other standards adopted by other governmental units of this state and with other states and the federal government and with nongovernmental persons interacting with governmental units of this state. Further, Assembly Amendment 1 provides that the standards may include alternative provisions if warranted to meet particular applications.

The amendment also authorizes DOA to promulgate emergency rules to implement its rule-making authority and permits DOA to adopt such emergency rules as are necessary without being required to provide a finding of emergency for the proposed rules.

3. The amendment makes a series of nonsubstantive numbering and revisions to the bill to accommodate the changes made by Assembly Amendment 1.

Senate Amendment 1

Senate Amendment 1 to 2003 Assembly Bill 755 makes a series of changes to the original legislation.

Specifically, the amendment provides:

1. That the bill would apply to a transaction that is governed by the federal Electronic Signatures in Global and National Commerce Act ("E-Sign"), but the statutes are not intended to limit, modify, or supersede 15 U.S.C. s. 7001 (c). Section 7001 (c) relates to consumer protection provisions in E-Sign.

2. That, to the extent that it is excluded from the scope of 15 U.S.C. s. 7003, the bill does not apply to a notice to the extent that is governed by a law requiring the furnishing of any notice of:

a. The cancellation or termination of utility services, including water, heat, and power service.

b. Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual.

c. The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities.

d. Recall of a product, or material failure, that risks endangering health or safety.

e. A law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

3. The amendment also makes two numbering changes to accommodate the additional language inserted by the amendment.

The affect of the first portion of the amendment (see item 1., above) is to protect certain consumer protections contained in the federal E-Sign legislation. Those provisions relate to providing consent to electronic records, preserving certain consumer protections with regard to electronic transactions, regulating verification or acknowledgement and providing regulations related to the failure to obtain electronic consent, or confirmation consent. In addition, language is included to deal with the prospective effective in any consent as well as the legal basis for prior consent. Finally, the provisions provide that an oral communication or recording of an oral communication cannot qualify as an electronic record for purposes of the consumer protection section except as otherwise provided under applicable law.

The second set of changes relating to the specification of particular notices (see item 2., above) is focused on providing that the proposed state UETA legislation does not override the current exclusions under the current federal E-Sign legislation. These provisions are currently part of E-Sign.

It should be noted this language has been reviewed by the staff of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and in their opinion adoption of this language would not adversely affect the preemption of state laws that can occur when nonstandard substantive provisions to UETA are adopted by a state legislature. It is also language that has been negotiated by NCCUSL and the Consumer's Union. Thus, the intent of the amendment is to provide the same basic consumer protections that are contained in the federal E-Sign law that, without enumeration in the state legislation, may be subject to an argument that they have been preempted by the adoption of the UETA language at the state level.

Senate Amendment 2

Senate Amendment 2 makes the following changes in the bill:

1. The amendment provides that the legislation does not apply to any of the following records or any transaction evidenced by any of the following records:

a. Records governed by any law relating to adoption, divorce, or other matters of family law.

b. Notices provided by a court.

c. Court orders.

d. Official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

These exemptions are parallel to the exemptions currently contained in the federal E-Sign legislation.

2. The amendment also modifies language in the bill relating to documentation and evidentiary determinations. The original legislation provided that s. 889.29 (1), Stats., did not apply to records governed by s. 137.20, as created by the proposed legislation. Senate Amendment 2 provides instead that under this section, no such record is inadmissible solely because it is in electronic format.

3. The original legislation also amended s. 910.03, Stats., relating to admissibility of duplicates. The bill stated that the section did not apply to records of transactions governed by s. 137.21. That language is deleted and the amendment provides that no duplicate under this section is inadmissible solely because it is in electronic format.

4. The amendment also makes two numbering changes to accommodate the proposals contained in the amendment.

Legislative History

Assembly Bill 755 was introduced on January 20, 2004 by Representative Nischke and others; cosponsored by Senator Kanavas and others and referred to the Assembly Committee on Financial Institutions. A public hearing was held on the bill on January 21, 2004 and executive action was taken on the same date following the public hearing. The committee voted to recommend passage on a vote of Ayes, 8, Noes, 7.

The bill was placed on the Assembly calendar of February 3, 2004 by the Assembly Committee on Rules on January 28, 2004. Assembly Amendment 1 was offered by Representative Nischke on February 3, 2004. The Assembly, on February 3, 2003, adopted Assembly Amendment 1 on voice vote, and on February 5, 2003 passed the bill, as amended, on a vote of Ayes, 58; Noes, 38; Paired, 2.

The bill was referred to the Senate Committee on Organization. Senator Kanavas offered Senate Amendments 1 and 2 on March 1, 2004. The Senate, on March 2, adopted both amendments on voice votes and concurred in the bill, as amended, on a voice vote.

It should be noted that Assembly Bill 755 is a companion bill with Senate Bill 404.

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